

1927

The Need for Constitutional Revision in Minnesota

William Anderson

Follow this and additional works at: <https://scholarship.law.umn.edu/mlr>



Part of the [Law Commons](#)

Recommended Citation

Anderson, William, "The Need for Constitutional Revision in Minnesota" (1927). *Minnesota Law Review*. 2518.
<https://scholarship.law.umn.edu/mlr/2518>

This Article is brought to you for free and open access by the University of Minnesota Law School. It has been accepted for inclusion in Minnesota Law Review collection by an authorized administrator of the Scholarship Repository. For more information, please contact lenzx009@umn.edu.

MINNESOTA LAW REVIEW

Journal of the State Bar Association

VOLUME 11

FEBRUARY, 1927

No. 3

THE NEED FOR CONSTITUTIONAL REVISION IN MINNESOTA

By WILLIAM ANDERSON*

1. THE ORIGINAL CONSTITUTION

THIS ARTICLE is the result of an effort to analyze the question of the need of convening, in the near future, a constitutional convention for the state of Minnesota. The question has been broached on a number of recent occasions, both in and out of the legislature, but it has not been submitted to the electorate since 1896, when the proposal to hold a convention received a favorable majority but not a sufficient vote to comply with the constitutional requirement. Since the recent election, at which only one of three proposed amendments was adopted, has shown once more the extreme difficulty in amending the constitution, it may serve a real public purpose to set forth the numerous factors which bear upon constitutional progress in this state. We shall first diagnose the case as fully and as fairly as space and the writer's limitations will permit, and close with a short discussion of proposed remedies.

The only constitutional convention ever held in Minnesota convened in St. Paul on July 13, 1857, under the authority given it by Congress to draft a constitution for the proposed new state. It is familiar knowledge now to all who have read the history of the state that, because of bitter partisan feeling between evenly-balanced groups of Republicans and Democrats, the convention was unable to organize peacefully as a whole, but split instead into two factional bodies, each of which claimed to be the legal constitutional convention, and which continued separate and outwardly unyielding to the end.¹ Each proceeded to draft its own pro-

*Professor of Political Science, University of Minnesota.

¹The history of the constitutional conventions is set forth in 1 Folwell, *A Hist. of Minn.*, pp. 388-421, and in Anderson and Lobb, *A Hist.*

posed constitution for the future state, but as their work drew to a close and the members sensed the grave dangers involved in submitting two distinct constitutions to the voters at the same time, they arranged, with some difficulty, for a conference committee of the two bodies.

This committee of ten members was instructed to agree, if possible, upon a single constitution to which the two bodies could agree. It went to work with a will, meeting daily and attempting to harmonize and weave together into one instrument the several articles of a constitution already worked out by the separate conventions. After a week of labor they reached a crucial question upon which agreement seemed impossible. This was the proposal, upon which some of the Republicans were insistent and the Democrats unyielding, to submit to the voters the question of negro suffrage. At this point the situation appeared to be so desperate that the committee practically gave up all hope of compromising on one constitution. When they met again to seek some other solution two leading members of the rival parties fell to blows in the committee room. As they were separated by their fellow committee members they were urged to abstain from further attendance. It was then that the remaining eight members, under a sense of grave responsibility, found a solution which both parties could accept. The Republicans gave up their proposal to submit the question of negro suffrage to the voters along with the new constitution but they gained a new and very simple provision for future constitutional amendments. Their thoughts were of the future, when they hoped to control the state and to put through their suffrage proposal as well as other changes.

In the afternoon of the tenth day after their first meeting the members of the Democratic conference committee returned to their convention and reported that they had "been at work as assiduously as they could, for the last twelve hours, in perfecting a constitution to be submitted to the convention" and that their work was practically complete. The next morning the Republicans received a similar report and on that day, August 28, in spite of violent protests, both conventions adopted the conference report without amendment. By this action both conventions substituted the compromise constitution for the separate constitutions upon which they had been working. That night a group of copyists,

of the Const. of Minn., 1921, pp. 42-132. For a shorter account see 5 MINNESOTA LAW REVIEW 407-431. The debates of the two wings were separately published.

from eight to sixteen in number, sat up late to prepare two distinct but identical enrolled copies of the constitution, one for each convention, since each still insisted that it was the only legal constitutional convention in existence. On Saturday, August 29th, after seven weeks of wrangling and discord, the two conventions came to a close when as many members of each as could bring themselves to do so signed their particular enrolled copy of the proposed constitution.

From this brief resumé of the proceedings of the conventions of 1857 it must be evident to all that the original state constitution was not drawn up in that calm and deliberate manner which is essential to a good result. The conventions themselves, although stormy enough, spent some weeks in constitutional discussions, but the constitution did not result directly from their debates. Instead, the raw materials which they had produced were turned over to a separate conference committee of ten members. This body met in secret and kept no record of its proceedings. To a considerable extent it chose sections which had emanated from the Democratic wing, and to a less extent those which the Republicans had produced, but much of the document finally put forth was different from what either wing had adopted. The published debates of the two wings of the convention are, therefore, of little value in explaining the provisions and phraseology of the constitution, and they have been only infrequently cited.² The real constitution was somewhat hastily pieced together, in a little over one week, by the conference committee, and was then passed by both wings within twenty-four hours, without change and almost without debate. As one member put it, "This is a dose that has got to go down, and we might as well shut our eyes and open our mouth and take it." And so it was done.

Even the final work of enrolling and signing was done in great haste. Two "originals" were made which were supposed to be identical, but in fact show many minor differences. A careful comparison of the two made several years ago revealed over three hundred differences in punctuation and some seventeen slight discrepancies in wording.³ Perhaps no one of these differences, possibly not all of them together, really make much difference in

²The judges have disagreed as to the value of the debates. See Anderson and Lobb, *A Hist. of the Const. of Minn.*, pp. 110-14, and Kumm, *The Const. of Minn. Annotated*, pp. 239-40.

³For these discrepancies see Anderson and Lobb, *A Hist. of the Const. of Minn.*, pp. 270-75.

meaning, but the simple fact is that, since both enrolled originals are of equal validity, no one can today be sure that he knows exactly what the constitution contains. The printed versions all vary considerably from one or the other or even from both originals.

It is unquestionable, also, that the members of the rival conventions were far from being pleased with the product of their labors. In the last week of their sessions the members had become convinced "that the adoption of one constitution is paramount to all other questions, in order to avoid a prospective state of anarchy." The contents of the constitution they adopted did not really matter; the main object was to agree upon a single proposal. It was, in fact, because of dissatisfaction with the constitution that both wings were so ready to accept the easy amending process upon which the conferees had agreed. Under this provision a single legislature could propose amendments by a simple majority vote in each house, and the amendment would go into effect the same year if it received the approval of a majority of the voters who voted on the proposition at the regular annual election. With this provision in it, the constitution could be defended in the campaign for ratification against any objection to its contents by this simple argument:

"We admit that the constitution is not perfect. The important question now, however, is to adopt peacefully some constitution, whatever it may contain, and to get Minnesota into the Union as quickly as possible. Amendments to the constitution can be made very easily after Minnesota has become a state."

A simple amending process was, in fact, almost indispensable to a constitution drafted and adopted as this one was.

2. THE OLD AND THE NEW AMENDING PROCESSES

For a period of forty-one years, from 1858 to 1898, inclusive, Minnesota retained the simple constitutional amending process described in the preceding paragraphs. Then the provision was changed to read that no amendment should be considered adopted unless approved by "a majority of all the electors voting at said election."⁴ The reason for the change to this more difficult process in 1898 has never been fully worked out, but it has been said that the liquor interests fostered the change in order to make more difficult the adoption of an amendment prohibiting the liquor

⁴Art. 14, sec. 1.

traffic. Perhaps other large business and corporate interests had also some reason to favor such a change, since they had been directly and adversely affected by several important measures adopted by popular vote in the years immediately preceding.⁵ Whatever may be the true explanation of the change, it has of late been asserted in several newspapers that the old method of amendment had proved to be too easy and that constitutional amendments were being proposed and adopted too rapidly.

It is, in a sense, a matter of mere opinion whether the obstacles to amending a constitution are too easy or too hard to overcome. In politics, and this is largely a question of politics, that amending process is too difficult which prevents a favored amendment from passing, and that process is too easy which permits the passage of an amendment to which one is opposed.

It is possible, however, to apply a more rigid test to the former amending process in Minnesota. Under this procedure, from 1858 to 1898, inclusive, the legislature proposed and the voters passed upon a total of sixty-six amendments.⁶ During this period Minnesota was growing rapidly in population and was faced by a number of problems not foreseen by the framers of the original constitution. Some amendments were undoubtedly needed from time to time. The legislature in this period held thirty regular sessions, annual sessions being the rule up to 1877. Throughout this period, then, the legislature proposed amendments at the rate of a little over two per session, or three every two years. If this be considered too rapid a rate for proposing amendments let it be cited that in the twenty-seven years from 1899 to 1925, inclusive, the legislature in fourteen regular sessions submitted fifty-eight amendments or an average of more than two per year and more than four per session. From this it would appear that in former days the legislature, knowing how easy it then was for the voters to adopt amendments, assumed the responsibility of scrutinizing each proposal with considerable care and of submitting only those which it considered wise.

⁵The so-called Garrett and Wadsworth proposals to make it more difficult to amend the federal constitution seem to have been inspired by a similar reaction of certain interests against several recent amendments to that document. See Miller, *Amendment of the Federal Constitution: Should it be made more difficult*, 10 MINNESOTA LAW REVIEW, 185-206.

⁶These and all other proposed amendments down to 1920, together with the votes thereon, are listed in Anderson and Lobb, *A Hist. of the Const. of Minn.*, at pp. 278-285.

But although amendments have been *proposed* at a more rapid rate in recent years and under the present amending process, it is also true that amendments were *ratified* at a more rapid rate in the earlier period. Between 1858 and 1898, forty-eight amendments were adopted, whereas from 1900 to 1926 only sixteen were ratified. The rate of adoptions under the former procedure was more than one (one and one-sixth) per year. Under the present procedure, from 1900 to the present, adoptions have been a little more than one (one and one-seventh) every two years. This raises a question as to the wisdom of the amendments adopted in the earlier period. While no unimpeachable test of wisdom in such matters can be laid down, it is submitted as a matter of some interest that only one of the forty-eight amendments adopted between 1858 and 1898 was ever expressly repudiated by the state. This was the amendment, adopted in 1858 before Minnesota became a state, which authorized a loan of \$5,000,000 for the building of railroads.⁷ The interest in this proposition was so keen and general, and the arguments for it so persuasive, that nearly all the voters came to the special election upon it, and nearly four-fifths of them voted in favor of it. Thus, if the same ratios had applied throughout our present electorate, it would have been adopted even under our present requirements. Suffice it to say, however, that this amendment was soon afterwards repealed, yet no one at the time seems to have thought this a reason for making the constitution more difficult to amend. No other amendment of this entire period has been thus repealed. Although some have been superseded by subsequent amendments, the latter have accepted and built upon the principles embodied in the earlier amendments which they supplanted. In fact, if the proof of a constitutional amendment lies in its being accepted and approved over a long period of years, the overwhelming majority of those adopted prior to 1898 have already amply proved their worth.

The only exception to this statement which the writer would make is the one now under discussion. The amendment of 1898, which made more difficult the amending process thereafter, has for years been criticized in many different quarters. Space does not permit a complete analysis of the operations of this provision but a few figures and illustrations will help to set the matter in

⁷The text of this amendment will be found in Minn. Laws 1858, ch. 1, and in Anderson and Lobb, *op. cit.*, pp. 241-43. The whole episode is fully discussed in 2 Folwell, *A Hist. of Minn.*, pp. 37-58.

its true light. The figures for the amendment of our constitution from 1858 to the present are as follows:

	Number of Amendments Proposed	Number Adopted	Number Rejected	Per Cent Adopted	Per Cent Rejected
1858-98	66	48	18	73	27
1899-1926	58	16	42	28	72
	<u>124</u>	<u>64</u>	<u>60</u>		

The former steady flow of amendments has been checked. Where once 73 per cent of the legislature's proposals were adopted, now 72 per cent are rejected simply by reason of the higher majorities required. For the same reason the legislature has lost much of its responsibility for constitutional amendments. It proposes more amendments than before, not only because more are needed, but also because it feels less responsible for the result. In 1914 eleven amendments were submitted at one election, and in 1916 eight. Some important amendments are proposed again and again, at considerable public expense and to the annoyance of the voters, because it is realized that the chance of passing an amendment increases as the voters become more and more familiar with it. Even so it is difficult if not almost impossible to get more than one amendment adopted at a time. In fourteen elections beginning in 1900, only sixteen amendments have been adopted. Those which are adopted are usually of one or the other of two kinds. Either they are amendments which have been voted on before and to which there is no real opposition, such as the probate judge amendment of 1920, or they are such as have a strong and united backing in organizations which can afford to spend much time and money in the propaganda. Many amendments which should be made to promote the better government of the state cannot be given a hearing under present conditions.

Another fact, of which many illustrations could be given, is that the will of the majority of informed and active voters is defeated time and again by the constitutional requirement. At one election after another tremendous majorities are piled up for particular amendments only to be frustrated by the method of counting. The last election, for example, shows the following results:⁸

⁸These are the complete official returns as published unofficially by The Minneapolis Journal, November 16, 1926.

Total vote cast at election, 722,781.

Vote required to pass an amendment, 361,391.

Amendment no. 1—To enlarge the supreme court; yes 331,964; no 148,784; favorable majority over 2 to 1; *defeated*.

Amendment no. 2—As to taxation of forest lands; yes 383,003; no 127,592; favorable majority over 3 to 1; *carried*.

Amendment no. 3—Limitation of stockholders' liability; yes 323,322; no 140,422; favorable majority over 2 to 1; *defeated*.

Total vote, amendment 1, 480,748; non-voting 242,033

Total vote, amendment 2, 510,595; non-voting 212,186

Total vote, amendment 3, 463,744; non-voting 259,037

In defense of the Minnesota method of counting it is sometimes argued that those who do not vote on amendments are just as well informed and just as much interested as others, and that they fail to vote because they oppose the amendments and know that failure to vote counts as a negative vote.⁹ No doubt there are some voters who act in this wholly intelligent and intelligible way, but a large number and probably a majority of those who fail to vote on amendments do so because of ignorance of the measures or indifference to them. The method of counting to determine majorities makes little or no difference to this large element, and it was, in fact, for the purpose of counting these voters against amendments that the amending process was changed. In 1898, for example, when the former system of determining majorities was still used, 252,562 votes were cast for the governorship, but over 50 per cent of these voters failed to vote on any of the amendments that year. Other states which still follow Minnesota's former method of calculating majorities on amendments have exactly the same experience. In every case a considerable number of voters who come to the polls to vote for officers fail to vote on amendments, and the method of determining majorities makes little difference to them. The percentage of habitual non-voters on such measures varies from less than five, in some cases, as on such an amendment as the prohibition of the liquor traffic, to over 50 per cent on less well-advertised amendments. The present amending process itself was adopted as an amendment in 1898 by 69,760 favorable votes against 32,881 negatives, making a total of 102,641 votes on this proposition as

⁹*Pari ratione* the voter who votes "no" upon an amendment in Minnesota displays his ignorance, since he is doing an absurd and useless thing.

against 252,562 votes cast for governor. Under the present method of determining the outcome it would have failed of adoption by at least 56,522 votes.

3. THE NEED OF CONSTITUTIONAL REVISION

Having shown some of the difficulties involved in amending the constitution by the present amending process we may proceed to consider whether the constitution is really in serious need of an overhauling. That it functions in the main in a tolerable manner cannot be denied. It ties the hands of the legislature in a great many unwise ways, no doubt, and prevents the introduction of better methods of government in all three of the major departments, but still it is possible for the state to "muddle along" with the present constitution if it so desires for a number of years to come. In that case, however, the state must be prepared to pay something as the price of inefficiency. We present for discussion the proposition of whether a complete revision and modernization of the constitution would not result in governmental improvements of a value far exceeding the cost of the revision.

(1) *Obsolete and Unenforced Provisions.* In its present form the constitution includes a number of provisions which have simply become obsolete. They do no harm, of course, beyond causing some confusion in the mind of the reader and spreading misinformation among young students and new citizens who study the document for the first time. Among the obsolete provisions are the section which provides for the election of United States senators by the legislature, and that which provides for woman suffrage in school and library elections.¹⁰ The suffrage qualifications are in large part obsolete, not only in attempting to restrict the elective franchise to male persons, but also in the special provisions for Indians.¹¹ The latter are dealt with in the constitution as if they are not citizens. This is, of course, no longer the case since Indians were given full citizenship by act of Congress in 1924, and may now claim the protection of the Fifteenth amendment in suffrage matters.¹² The section abolishing Manomin county, having accomplished its purpose, is also useless now.¹³

Obsolete in an entirely different way are certain sections which are no longer observed in practice. Certain things which the con-

¹⁰Art. 4, sec. 26, and art. 7, sec. 8.

¹¹Art. 7, sec. 1.

¹²43 Stat. at L. 253.

¹³Art. 11, sec. 7.

stitution directs shall be done are not done, either because the legislature cannot or because it will not comply with the provisions. Such provisions are construed, then, as being "directory" rather than "mandatory". Among these are the section as to the reading of bills which directs three separate readings on three separate days in each house for each bill to be passed, and provides that "no bill shall be passed by either house until it shall have been previously read twice at length."¹⁴ Time does not permit a compliance with the latter requirement, and the printing of all important bills really makes it unnecessary.

Another section directs the legislature to provide for a state census in 1865 "and every tenth year thereafter."¹⁵ State censuses never were highly accurate, because of a failure to provide adequate funds and also because of the selection of the enumerators primarily on a political basis. The last state census was taken in 1905, and no law now provides for any state enumeration. In the same section there is provision for a reapportionment of representation and a redistricting of the state after each state and federal census. The intention of the framers seems to have been to provide for a frequent and regular reapportionment of congressional and legislative representation. As a matter of fact, although there are now some marked inequalities in the districts both for congressional and legislative elections, the last reapportionment, made in 1913, was not changed after the 1920 session, nor is there likely soon to be a new apportionment.¹⁶

This ignoring of the constitutional provisions as to the census and the apportionment is paralleled by the treatment accorded to the next following provision as to the election of state senators.¹⁷ According to this section, senators should be elected from even-numbered districts at one election and from odd-numbered districts at the next. The purpose of this over-lapping system of terms was, undoubtedly, to give more continuity to the senate's membership than was evidenced in the house, and to make it in this respect comparable to the United States Senate. In practice, however, all senators are elected at the same time and for the same term, the last election having taken place in 1926.

Another constitutional provision which is practically obsolete because ignored in practice is that requiring the publication of a

¹⁴Art. 4, sec. 20.

¹⁵Art. 4, sec. 23.

¹⁶The apportionment of 1913 was slightly altered in 1917. Minn. Laws 1913, ch. 91; Minn. Laws 1917, ch. 217; Minn. Gen. Stat. 1923, secs. 8, 9.

¹⁷Art. 4, sec. 24.

detailed report of the treasurer "in the next volume of the acts of the legislature."¹⁸ This provision, it is true, has not the same value now as it had when legislative sessions were held and laws were published annually, but the voters have failed on two occasions to repeal it and it is still a part of the constitution.¹⁹

Other examples might easily be found of provisions which no longer have any real effect. In all such cases, however, it is the more honorable thing to enforce the provision until it can be repealed. To say, as we now must in Minnesota, "Oh, well, we just ignore that section of our constitution" is not to create the greatest respect for constitutional government.

(2) *The Legislature.* The constitution puts practically no limits on the size of the two houses of the legislature. With every reapportionment, therefore, pressure is used by local political leaders to bring about an increase in the size of both houses. At present the senate, with 67 members, is the largest state senate in the country, and the house, with 131 members, is well above the average size of all lower houses except those in New England where town representation is the rule. No serious evil has as yet resulted from the increasing size of the chambers, but this question of size will have to be considered in connection with reapportionment when that matter comes up again.

Regular sessions of the legislature are now limited to one session of ninety legislative days each biennium. The biennial principle is now well established and satisfactory, but the present time limitation has certain disadvantages. Whenever this question is again reconsidered, some thought should be given to the split-session plan used in California and West Virginia, and to the unlimited sessions which obtain in Massachusetts, New York, and other states. The effect of the time limit has been in part, of course, to speed up business, but in part, also, it has led to extreme haste in legislation during the closing weeks and to the failure of desirable measures because of lack of time.

(3) *The Executive.* Two notable efforts have been made in Minnesota in recent years to bring about a reorganization of the state's executive and administrative machinery in the interests of greater economy and effectiveness. One of these movements, initiated by Governor Eberhart in 1913, when he appointed the

¹⁸Art. 9, sec. 11.

¹⁹The attempts to repeal this section were made in 1910 and 1914. See Minn. Laws 1909, ch. 507; 1913, ch. 587. In both cases the actual vote was more than 2 to 1 for the repeal.

so-called Efficiency and Economy Commission, resulted in a complete and systematic report but very little legislation to carry it out. Again in 1923-25 the movement was revived, this time without so systematic a preliminary study but with more legislative success. In the meantime a number of other states, such as Massachusetts, New York, and Illinois, have gone much farther than Minnesota in modernizing their administrative machinery.

Governor Eberhart's commission of 1913 reported that:

"The reorganization of the state administration can be accomplished fairly well without amending the constitution. One or two amendments are desirable, but the great bulk of the commission's plan can be put into effect by acts of the legislature."²⁰

It is reasonably clear, however, that complete centralization of the executive authority in the governor cannot be accomplished without constitutional changes. Section 1 of article 5 provides that:

"The executive department shall consist of a governor, lieutenant governor, secretary of state, auditor, treasurer, and attorney general, who shall be chosen by the electors of the state."

The governor, it will be noted, is not "the executive" nor even "the chief executive." Really we have a five-headed executive department, the lieutenant governor being negligible, and just as long as the constitution requires the election by popular vote of the secretary of state, auditor, treasurer, and attorney general, these officers will be largely independent of the governor's control, and will in fact be given by the legislature important functions to exercise in such manner as they see fit. When, as happened in 1915, the governor-elect is of one party and the other officers are of another, there will not be complete harmony; and this condition will prevail to some extent also when as frequently happens, the various executive officers are of different factions of the same party. We do not have to go far back in our state's history to find an auditor working directly against the governor in an important legislative matter although both were of the same party. Furthermore the governor's term of two years is inadequate for the purpose of carrying out any important administrative policy and it is only through the uncertain practice of reelecting our governors that we give them a real opportunity to produce results. The state auditor, by contrast, is given a four year term.

In connection with the powers of the governor it may be pointed out, on the other hand, that in legislative and financial mat-

²⁰Preliminary Report of the Efficiency and Economy Commission, St. Paul, 1914.

ters the governor's powers in Minnesota are relatively more extensive than those of the president of the United States. The governor may approve or veto bills for three days after the legislature adjourns, whereas there has been some doubt as to the power of the president to approve a bill after the end of the session of Congress.²¹ In addition the governor has, and has had for fifty years, the power to veto single items of appropriation while approving other portions of a bill. This power, which governors have frequently used, the president has never had. In 1915-16 an attempt was made unsuccessfully to amend the constitution to permit the governor to veto items "in whole or in part." A few states have gone so far as to confer on the governor by constitutional provision the power to initiate and to some extent to control the passage of the budget. In Minnesota such power as the governor has to prepare and propose the budget rests upon a statute.²²

(4) *The Judiciary.* In the nearly seventy years history of the state there have been twelve amendments to the article dealing with the legislature, four to that establishing and organizing the executive department, and three to the article on the judiciary. In all three cases other amendments have been submitted without success. At the present time, in addition to certain minor defects, the judiciary article is open to several major criticisms. In the first place, following the radical views of the western democracy which predominated on the frontier in 1857, the framers carried the principle of popular election to an extreme. All important judicial officers and some unimportant ones are made elective.²³ The supreme court justices are elected. The district judges are elected. Probate judges and justices of the peace are elected. All judges established by law, such as municipal judges, must be elected. The clerk of the supreme court, and the clerks of the district courts are elected. Even court commissioners must be elected unless the legislature sees fit to confer the powers of court commissioners upon the probate judges, and the legislature *may* provide for the election of the clerks of the probate courts! The only cases of appointment of judges authorized by our state

²¹For a discussion of this question see Rogers, *The Power of the President to sign Bills after Congress has adjourned*, 30 *Yale Law Journal*, 1-22 (1920).

²²Minn. Laws 1915, ch. 356; Minn. Gen. Stat. 1923, sec. 118.

²³Art. 6, secs. 2, 3, 4, 7, 8, 9, 13, and 15.

constitution are the appointments which the governor may make to fill up vacancies.²⁴

The western mid-nineteenth century democrats who framed our constitution left two other distinct marks upon our judicial system. Since they believed in the rotation of offices among the deserving, and believed also that too long a continuance in office had a corrupting effect, they insisted that terms of judicial office be short. At first the supreme and district judges held office for seven year terms, but when elections were made biennial their terms were reduced to six years. Probate judges and justices of the peace had their terms fixed at two years, and it took three distinct efforts in our own day to have the terms of probate judges extended to four years.²⁵

Another tenet of pioneer democracy was the fitness of any man to hold practically any office. They provided in the Minnesota constitution, indeed, that "the judges of the supreme and district courts shall be men learned in the law," which means simply that they shall be attorneys-at-law.²⁶ But all other judges, probate and municipal, all justices of the peace, clerks of the supreme and district courts, and court commissioners, presumably come under that section of the constitution which says that any and every voter "shall be eligible to any office which now is, or hereafter shall be, elective by the people" in the district wherein he resides for voting purposes.²⁷ If this be true, and it appears to be, then the legislature has no power to require municipal judges, probate judges, or any other class of judicial officers to be members of the bar. This requirement may not be made even as to county attorneys.

No one who has followed the progress of the movements for judicial reform in recent years can long remain content with a constitutional situation affecting the judiciary such as exists in Minnesota. Nevertheless it is interesting to observe that not one

²⁴Art. 6, sec. 10

²⁵The amendments were submitted in 1914, 1916, and 1920.

²⁶Art. 6, sec. 6.

²⁷Art. 7, sec. 7. This section has been construed or referred to in a number of cases. See Kumm, *The Const. of Minn. Annotated*, pp. 149-150. In *State ex rel. Childs v. Holman*, (1894) 58 Minn. 219, 59 N. W. 1006, Judge Mitchell said: "Whenever any public office of any kind is made elective, section 7, article 7 of the constitution becomes *ex proprio vigore* applicable and operative, and fixes the qualifications for eligibility. This is a denial of power to the legislature to impose any greater restrictions or to add other qualifications for eligibility to those prescribed by the constitution."

fundamental amendment to the judiciary article has yet been offered. The terms of probate judges were, indeed, extended from two to four years in 1920, when the amendment was proposed for the third time, but the terms of district and supreme court judges had previously been reduced from seven years to six. Three efforts have also been made, in vain, to enlarge the supreme court from five to seven justices.²⁸ Although insufficient to carry the amendment, the last vote was overwhelmingly in favor of the proposal; but many well informed persons see some real advantages in the present system of having two appointed commissioners to assist the five elective judges.

(5) *The State's Finances.* The subject of the state's finances has been dealt with in nearly half of the amendments to the state constitution. Article 9 alone has been amended nineteen times, while articles 4 and 8 have both been amended in their financial provisions, and articles 16, 17 and 18 have been adopted to provide methods of financing highways work and the prevention of forest fires, and to encourage reforestation by special taxation. The result of all these amendments has been in general to introduce more variety into the taxing methods of the state than was provided for in the original constitution. At the same time each amendment has given greater rigidity to the taxing system, since each one has, in some way, tied the hands of the legislators even when it seemed to be giving them more power. Thus the "road and bridge" amendments which succeeded each other rapidly between 1898 and 1912, and the trunk highway amendment of 1920, while they authorized the state to engage in internal improvements which had formerly been forbidden, at the same time stated definitely the amount or the method of taxation, and definitely restricted the expenditure of the proceeds to specific purposes.²⁹

The most comprehensive and clear-cut effort to enlarge and to make more flexible the legislature's taxing power was that which culminated in 1906 with the passage of what was then called the "wide open tax amendment."³⁰ In the original constitution it was provided that "All taxes to be raised in this state shall be as nearly equal as may be, and all property on which taxes

²⁸These proposed amendments went before the electors in 1914, 1916, and 1926.

²⁹See art. 9, sec. 16, and art. 16, secs. 2, 3.

³⁰This is the present section 1 of article 9, which took the place of the previous sections 1, 2, 3, and 4 of the same article.

are to be levied shall have a cash valuation, and be equalized and uniform throughout the state." On their face these words are not unduly restrictive of legislative power, but as construed by the courts they were held to forbid special assessments levied according to benefits, inheritance taxes not based upon a cash valuation, a railroad gross earnings tax, and a tax of one cent per ton on iron ore mined within the state.³¹ These and other similar decisions compelled the adoption of, first, a series of specific amendments which in effect "recalled" one after another of these decisions, and second, the broad provision which is the present basis of the taxing power of the legislature. This provision reads in part as follows:

"The power of taxation shall never be surrendered, suspended or contracted away. Taxes shall be uniform upon the same class of subjects, and shall be levied and collected for public purposes." Under this provision the supreme court has sustained the mortgage registry tax, the money and credits tax, the special taxation of express companies, the four-fold (now five-fold) classification of property for taxing purposes, the gross earnings tax, the inheritance tax, and various other taxes.³² In spite of these favorable decisions on the questions of classification and uniformity, however, it appears to be the opinion both of the tax commission and of the attorney-general's office that "a just and enforceable" progressive income tax law cannot be enacted in this state without a constitutional amendment.³³ Such a tax has the support of practically all students of public finance and has been recommended by the tax commission, by the legislature, and by at least one recent governor of the state, but when an amendment for

³¹See *Stinson v. Smith*, (1862) 8 Minn. 366 (Gil. 326); *State ex rel. Davidson v. Gorman*, (1889) 40 Minn. 232, 41 N. W. 948, 2 L. R. A. 701; *State ex rel. Marr v. Stearns*, (1898) 72 Minn. 200, 75 N. W. 210; and *State v. Lakeside Land Co.*, (1898) 71 Minn. 283, 73 N. W. 970. See also Kumm, *The Const. of Minn. Annotated*, pp. 161-171.

³²*Mutual Benefit Life Insurance Co. v. County of Martin*, (1908) 104 Minn. 179, 116 N. W. 572; *State ex rel. Winona Motor Co. v. Minnesota Tax Commission*, (1912) 117 Minn. 159, 134 N. W. 643; *State v. Wells Fargo & Co.*, (1920) 146 Minn. 444, 179 N. W. 221; *State ex rel. St. Paul City Railway Co. v. Minnesota Tax Commission*, (1915) 128 Minn. 384, 150 N. W. 1087; *State ex rel. Gage v. Probate Court of Hennepin County*, (1910) 112 Minn. 279, 128 N. W. 18. See Kumm, *The Const. of Minn. Annotated*, pp. 171-175.

³³Aside from the difficulties of classification of incomes according to amount for taxation at different rates, it is urged that the income tax should be a substitute for certain personal property taxes, and that exemption of such property from taxation cannot be made without a constitutional amendment. See Minn. Laws 1919, ch. 532, for the amendment proposed to overcome these difficulties.

this purpose was voted upon in 1920 it failed of passage although it received 331,105 favorable as against 217,558 unfavorable votes. The situation is this, therefore, that whenever the legislature decides to adopt the income tax as a substitute for other and less satisfactory revenue measures it must either run the risk, which some lawyers do not consider serious, of having the law it enacts declared unconstitutional, or it must proceed by the slower and also uncertain method of obtaining a constitutional amendment first.

Another provision of the constitution which puts obstacles in the way of the legislature's developing and from time to time amending a modern scientific revenue system is to be found in section 32(a) of article 4. By this provision the system of gross earnings taxation on railroads is practically written into the constitution, and any law for the repeal or amendment of any law upon this subject cannot take effect unless approved at an election by the same majority of voters as is required for a constitutional amendment, i.e., a majority of all voting at the election.

To speak of other financial provisions it is safe to say that the sections which purport to limit the state's debt and to prevent the state from engaging in works of internal improvement have been so seriously breached by specific amendments in favor of farm loans, forest fire protection, and highways, and have been to such an extent ignored in other cases of borrowing by the state, that they have become almost meaningless.³⁴ Instead of evading or ignoring the present apparent restrictions, the people would be doing a far more candid and straight-forward thing to admit that the constitutional provisions on these subjects made in 1857 to fit frontier conditions are no longer suited to the needs of the state, that they cannot be enforced according to their spirit, and that they should be replaced at an early date by provisions more suitable to present-day needs.

(6) *Local Government.* When we come to deal with local government we must handle a subject which has tremendously increased in importance in recent years. Minnesota has today 87 counties, 94 cities, 630 villages, 1 borough, 1961 organized townships, and 7907 school districts.³⁵ These local units levied property taxes alone for collection in 1926 to the amount of \$102,715,391. For the same period the state government, which has,

³⁴Art. 9, secs. 5, 6, 7, 8, 9, 10, and 14(a); art. 16, sec. 4; and art. 17.

³⁵These numbers are, of course, constantly changing, and have a general tendency upwards.

of course, a considerable additional income from the gross earnings taxes, automobile license and gasoline taxes, the ore tax, and other sources, levied only \$15,324,742 in direct property taxes.

The original constitutional provisions for local government were brief and apparently harmless.³⁶ Except as to counties the power of the legislature in the realm of local government was very extensive, and in a period when some legislative wild oats were being sown it was inevitable that there should be some development of the evil of special legislation as affecting the local areas. The legislature itself saw the vice in a situation which brought about the passage at every session of more legislation for particular counties, cities, villages, and towns than was enacted for the state as a whole. It took little urging, therefore, to induce it to propose amendments to restrict the evil. The first of these, proposed and adopted in 1881, had but a limited scope and effect, but the second, adopted in 1892, is one of the most drastic provisions of its kind to be found among American state constitutions.³⁷ It not only forbids special legislation generally in all cases where, in the judgment of the courts, a general law could have been applied, but it also goes on to forbid, specifically and without exception, the passage of any local or special law "regulating the affairs of, or incorporating, erecting or changing the lines of any county, city, village, township, ward or school district, or creating the offices, or prescribing the powers and duties of the officers of, or fixing or relating to the compensation, salary or fees of the same or the mode of election or appointment thereto," and so on through a long list of specific prohibitions.

Legislative practice with reference to cities, villages, towns, and school districts has been notably improved by the amendment of 1892 from which we have just quoted, although the situation is still far from perfect. With reference to counties, however, the legislative situation is nearly as bad as it ever was. By means of cleverly devised classifications, based upon two or three criteria, the legislature is today enacting a considerable amount of really special legislation under a very thin veil of generality. A careful study of the classifications used in the 1925 legislation for counties, as summarized in the footnote below, must give pause to anyone who believes in the meticulous enforcement of constitutional

³⁶Art. 11.

³⁷Art. 4, secs. 33, 34. See Anderson, Special Legislation in Minnesota, 7 MINNESOTA LAW REVIEW, pp. 133-151, 187-207, and Kumm, The Const. of Minn. Annotated, pp. 97-111.

Laws 1925, Chapter	Group 1. County Laws Wherein Area is the Primary Basis of Classification.			
	Area limits	Population limits (inhabitants)	Assessed valuation limits (millionths)	Other criteria
*132	380 to 400 sq. mi.	Over 20,000		Having over 37,000 platted lots
*181 ..	380 to 400 sq. mi.	Over 20,000	8 to 10	
*346	12 to 13 townships		18 to 20	
*143	Over 14 townships	10,000 to 12,500	5 to 6	
*17, *108	15 to 16 townships	6,000 to 7,000	3 to 4 †	Where county agric. soc. has "heretofore purchased" fair grounds
160	15 to 17 townships			
*325	28 to 29 townships	25,000 to 28,000	12 to 14	
*5	30 to 53 townships		Under 40 †	
*82	38 to 42 townships		Not less than 8	Having no state or fed. fish hatchery, etc. Where county owns fair grounds, etc. Having county system of poor relief
186	41 to 42 townships		9 to 12 †	
*91	41 to 43 townships	25,000 to 30,000		
*81, *96	55 to 65 townships	30,000 to 40,000	20 to 40	
*301	60 to 80 townships	45,000 to 75,000		Having total debt of from \$1,800,000 to \$2,500,000
54	Over 2,500 sq. mi.		Over \$500 per capita	
94	Over 2,500 sq. mi.		25 to 250 †	
12	70 to 80 townships		3 to 5 †	
*80	Over 80 townships		20 to 50	Owning a county fair ground with buildings, etc.
21	80 to 84 townships		6 to 12	
*7, *77, *79,	81 to 84 townships		6 to 12	
183	Over 85 townships		5 to 12	
323	95 to 105 townships		5 to 7 †	
*269	95 or more townships		5 to 12	
20	Over 5,000 sq. mi.		Over 250 †	
97	Over 5,000 sq. mi.		Over 300	
287	Over 5,000 sq. mi.		Over 300 †	
*379	Over 5,000 sq. mi.	Over 150,000		
127, *259	Over 5,000 sq. mi.	150,000 to 240,000		
267	Over 5,000 sq. mi.	Over 200,000		

requirements.³⁸ When a law is enacted to apply to "all" counties containing from 28 to 29 townships, and having a population of

³⁸Classifications of Counties for Legislative Purposes in Minnesota.

The following classification of statutes relative to county affairs enacted at the 1925 session of the legislature illustrates the confusion into which county legislation in this state has fallen. It is perhaps unnecessary to say that the bases for classification are contradictory and overlapping, that they are in many cases worked out so as to give particular counties special legislation without regard to special needs, and that some of them probably would be declared unconstitutional if tested in the courts. Salary and clerk hire laws are indicated by an asterisk (*). A dagger (†) following the figures which indicate assessed valuation limits indicates that the assessed valuation limits given are for the valuation "exclusive of money and credits." Other and more minute discrepancies in classifications have perforce been omitted from the table.

Group 1. (See page 207).

Group 2. County Laws Wherein Population is the Primary Basis of Classification

Laws 1925 Chapter	Population Limits (inhabitants)	Other Criteria
*288	Under 6,000 inhabitants	Wherein compensation is not fixed by special laws
	Under 8,000 inhabitants	" " " " " " "
	6,000 to 9,000(a), 8,000 to 13,000	" " " " " " "
	9,000 to 13,000(a), 13,000 to 17,000(a)	" " " " " " "
	17,000 to 22,000(a), 22,000 to 28,000(a)	" " " " " " "
	28,000 to 36,000(a), 36,000 to 45,000(a)	" " " " " " "
	45,000 to 55,000, 45,000 to 100,000(a)	" " " " " " "
	55,000 to 100,000	" " " " " " "
		Note (a). In the counties falling within the limits noted, probate judges are allowed additional compensation in proportion to the assessed valuation of the county.
*15	28,100 to 30,600	Wherein there is a city of the 3d class or larger size.
229	Under 150,000	
214	Over 150,000	
*130	150,000 to 240,000	Over 300 million assessed value †
*370	200,000 to 275,000	
337	200,000 to 350,000	
*370	220,000 to 330,000	
240	Over 225,000	{ Where city and county have a joint courthouse and city hall, etc.
248	225,000 to 330,000	{ Having a county agricultural society.
29	240,000 to 300,000	
*52	240,000 to 330,000	
*398, *368	380,000 or over	
43, 243, 249, 367, 369	400,000 or over	

from 25,000 to 28,000, and an assessed valuation of from \$12,000,000 to \$14,000,000,³⁹ it must be evident that "all counties" means "the one county." In fact it is understood that a number of laws of this type are permitted to pass not because they are general, as the constitution requires, but for the very reason that other members are assured by the bills' proponents in each case that they are *not* general, but apply to only one county. In this way the legislature is used to peddle out little salary increases to county officers and employees here and there without the legislators generally knowing anything about the merits or the necessities of each case.

The obvious solution for a situation such as this is to confer more power of self-government upon each county. Certainly in

Group 3. County Laws Wherein Assessed Valuation is the Primary Basis of Classification

Laws 1925 Chapt.	Valuation Limits	Other Criteria
* 78	Under 4 million	
*146	Not over 4 million	Except counties covered by special law or by one classifying counties otherwise than according to valuation alone.
	4 to 6 million, 6 to 10 million	" " " " " " "
	10 to 26 million, 26 to 40 million	" " " " " " "
401	Over 150 million †	Having debt not over 7 million exclusive of trunk highway bonds.
255	200 to 350 million †	
365	Not less than 315 million †	Having bonded debt not over \$6,400,000 inclusive of trunk highway bonds.

Group 4. County Laws of 1925 Based Upon Miscellaneous Classifications.

Laws 1925

Chapter	Classification
222	Applies in fact only to counties having county boards of education for unorganized territory.
310	Applies to counties having city-county board of control, having charge of hospitals in which patient suffered injury between March 1, 1924 and April 1, 1924! (Ramsey).
362	Applies to counties having county boards of tax levy, and authorizes increased road and bridge tax therein. (Hennepin).
28	Applies to counties in which land has been conveyed to state for an armory and in which a city of the 4th class has paid \$2,000 toward such armory site, and authorizes such county to appropriate not over \$3,500 to complete the transaction.

³⁹Minn. Laws 1925, ch. 325

the matter of salaries for county officers and employees it would not be exceedingly difficult to classify counties into a few large groups, to fix upper and lower limits for the salaries of the officers and employees in each group, and to devolve upon the boards of county commissioners the power to make reasonable salary scales within the limits thus fixed. In other words here is a situation which calls for legislative action to enforce the present constitution, and not for further amendment of that instrument.

To give counties genuine home rule, however, and to open the door to any fundamental improvement of county government, some important amendments of the constitution are required. As long as all important county officers must be popularly elected, and as long as the legislature has no power to prescribe professional or educational qualifications for elective officers, our county governments must continue to be over-decentralized and inexpert. This is practically the situation today under the section which says that provision shall be made by law for the "election" of such county or township officers as may be necessary, and the supporting section, previously quoted, making every voter eligible to almost every elective office in his district.⁴⁰

As we turn our attention from counties to cities and villages we find a somewhat better situation. The evil of special legislation, while still in evidence, is less pronounced than it used to be, largely because of the fact that cities and villages now have, and have had for thirty years, the power to adopt and to change their own charters as cities.⁴¹ Of the 94 cities now existing in the state, 68 operate under home rule charters. Any village, likewise, may become a city by adopting such a charter. Winona, temporarily secure in its position as the only city of the second class in the state, has not seen fit to adopt home rule, while Hibbing finds some advantages in continuing to be a village. With these two exceptions, however, all places in Minnesota of over 10,000 population in 1920 now are home rule cities, as are the majority of smaller cities.

Despite its great advantages in general, the municipal home rule provision of the constitution has shown some minor defects in practice, and several attempts have been made, unsuccessfully, to amend it. Under the existing provision, new charters need

⁴⁰Art. 11, sec. 4, as construed in *Spencer v. Griffith*, (1898) 74 Minn. 55, 76 N. W. 1018, and *State ex rel. Fischer v. Berg*, (1916) 133 Minn. 65, 157 N. W. 907; and art. 7, sec. 7. See note 27, above.

⁴¹Art. 4, sec. 36

not be published at all, but all proposed amendments must be "published for at least thirty days in three newspapers of general circulation in such city or village." Some small places do not have three local papers, and to publish in some metropolitan daily of local circulation is unduly expensive. Some criticism has been directed, also, at the provision for the appointment of the freeholders to charter commissions by the district judges, and at the requirement of a higher vote (three-fifths) for the amendment of charters than is required for the adoption of charters (four-sevenths). Both of these requirements, being based upon the total number of voters voting at the election, are unduly high and result in the calling of many special elections.

One problem of government which was imperfectly visualized by the founding fathers of 1857 is that arising in densely populated areas. In St. Paul alone there are today more inhabitants than the whole state had, exclusive of Indians, at the time of its admission to the union. St. Paul comprises one-third of the area and has over 95 per cent of the population and the taxable property of Ramsey county. In other words the same people really support two separate local governments, and it has been felt for years that a consolidation of city and county into one government would have numerous beneficial results. Such consolidation cannot really take place, it is felt, without a constitutional amendment.⁴² At the same time the whole Twin City area is rapidly becoming what is known as a single metropolitan area or "region," in which are arising a number of problems such as those of sewage disposal and regional planning. Perhaps there is no constitutional obstacle to legislative solution of the problem, but until it has been probed more fully we cannot be sure of this.

Townships (or towns) and school districts remain to be mentioned. In a swiftly changing economic order the township and the old-fashioned school district with its one-room school are rapidly becoming out of date. Their functions are passing to larger and more capable units such as the county and the consolidated district. The transition by which, one after another, some of these petty units may drop out of existence requires no constitutional change, since neither unit is absolutely established by the constitution. As long as the township exists, however, all

⁴²Art. 11, sec. 2, does not appear to be adequate to authorize the consolidation of city and county offices.

of its important officers must be elective, as in the case of county officials.⁴³

(7) *Bill of Rights and Miscellaneous Provisions.* The bill of rights, if not entirely above criticism, appears to be on the whole the most satisfactory article of the constitution today. Its provisions are mainly of ancient origin and distinguished lineage, and have become, through long years of judicial construction, fairly well defined and understood. The present writer, at least, is not prepared to suggest any changes in it.

If this paper had not already become too long the writer would have liked to comment at some length upon various other provisions in our constitution. He might have taken up the provision for double liability for stockholders in ordinary business corporations,⁴⁴ the relationship of the constitutional pardon board to the proposed revision of some parts of the state's criminal laws,⁴⁵ the problem of the constitutionality of preferential voting and proportional representation under Article 7, section 1,⁴⁶ and a number of other matters—but space is limited.

A word may be said, however, concerning the present general disorganization of the constitution. It was hastily drawn in the first place, and through constant patching and amendment it has become a much confused and confusing document. The stage of disorganization which it has now reached is illustrated by the fact that the elective franchise is dealt with in scattered provisions in four different articles;⁴⁷ state funds and finances are regulated in seven different articles;⁴⁸ highway matters and other internal improvements are provided for in six separate articles;⁴⁹ and the affairs of local governments such as counties, cities, villages and school districts are also regulated or mentioned in six distinct parts of the constitution.⁵⁰ Disorderliness in arrangement is further evidenced by the fact that sections are no longer numbered consecutively, Article 9 having a section 1a but no sections 2, 3, and 4, while Article 4 has a section 32a and a section 32b on wholly unrelated subjects. Banking laws are dealt with in the

⁴³Art. 11, sec. 4.

⁴⁴Art. 10, sec. 3.

⁴⁵Art. 5, sec. 4.

⁴⁶See *Brown v. Smallwood*, (1915) 130 Minn. 492, 153 N. W. 953, Ann. Cas. 1917C 474.

⁴⁷Art. 1, sec. 17; art. 4, secs. 2, 15; art. 7; art. 15, secs. 2, 3.

⁴⁸Art. 4, secs. 32, 32(a); arts. 8, 9, 10, 16, 17, and 18.

⁴⁹Art. 4, secs. 32(a), 33; art. 8, sec. 2; arts. 9, 16, 17, and 18.

⁵⁰Art. 4, secs. 33, 34, 36; arts. 7, 8, 9, 11, and 17.

article on state finances, whereas other business corporations have an article by themselves. Minor evidences of disorderly arrangement are abundant but need not be recorded here.

On top of these facts it should be noted that some provisions are in direct conflict with each other, so that it is only through judicial decisions that we are able to know which provision prevails.⁵¹

4. HOW REVISION MAY BE BROUGHT ABOUT

When the writer had reached this point in his analysis of the constitution, and thought over the number of provisions which are either poorly observed or not observed at all, he was inclined to write over the result the caption: "The Decadence of Constitutional Government in Minnesota." To call the whole constitution decadent would, however, be an exaggeration. No doubt the trunk of the tree is still sound, but some of the branches are dead and decayed while others are either distorted or stunted in their own growth, or they stand in the way of the natural development of the whole. A liberal pruning would undoubtedly have a beneficial effect, but the question arises as to how this can be accomplished.

To the writer it seems that the present amending process is wholly inadequate for the purpose. At the best it produces only about one amendment every two years, and each amendment relates as a rule to but a single point. There are, however, at least three other ways out of the difficulty. The first would be to amend the amending process itself. Just as, in 1898, it was possible for the legislature and the voters to make the process more difficult, just so it is now possible to make it easier again. If the legislature were to propose an amendment making three-fifths, or four-sevenths, or even a simple majority of those voting *on the proposition* sufficient to carry an amendment, and were to submit this amendment to the voters not only once but twice or three times, as has been done with other amendments, the chances for

⁵¹For example, art. 11, sec. 1, is not in harmony with art. 4, sec. 33, and it has been held that the latter abrogates the conflicting provisions of the former. *Nichols v. Walter*, (1887) 37 Minn. 264, 33 N. W. 800; *Smith v. Board of County Commissioners of Renville County*, (1896) 64 Minn. 16, 65 N. W. 956; *State ex rel. Childs v. Board of County Commissioners of Crow Wing County*, (1896) 66 Minn. 519, 68 N. W. 767, 69 N. W. 925, 73 N. W. 631, 35 L. R. A. 745, and other cases.

adopting it would be very good.⁵² Best of all would be for the legislature to submit this proposition, and this one alone, until it was adopted.

A second suggestion relates to the type of amendment submitted. The legislature seems to have assumed that each amendment it submits must be limited to a single point but there is no constitutional requirement to this effect. If we may suggest analogies from other fields, legislative bills are sometimes amended by striking out all but the enacting clause; and the city of St. Paul is now operating under a charter all but the first two sections of which were adopted in 1912 as an amendment to the previous charter. The writer would not propose anything so drastic as this, but would suggest that a whole article of the constitution might be revised at one time in this way. Thus the judiciary article might be revised at one time, the article dealing with state finances at another, the article on amendments at another, and so on. If in the meantime a simpler amending process could have been adopted, it would not be inordinately difficult to have such revisory amendments adopted by the voters.

The objection may be presented to this second suggestion not only that the work would take a long time, but also that the legislature is not the proper body to revise the constitution. It is true that American states have generally preferred to entrust this function to separate bodies known as constitutional conventions, but it is a fact, nevertheless, that through the exercise of their power to propose amendments, legislatures have in recent decades drafted considerable portions of our present state constitutions. It is also true that where, as in Minnesota, it is difficult to assemble a constitutional convention, the legislature may be forced by circumstances to be the chief agent of constitutional revision.

This brings us to the third possibility, namely that of a state constitutional convention. Having themselves had a most tumultuous and unhappy experience, the members of Minnesota's first constitutional convention were apparently not inclined to make it easy to call another. The proposal to call a convention to revise

⁵²Of the 42 amendments rejected from 1900 to 1926 inclusive, all but one received a majority of the votes cast on the proposition. If we assume that all the voters who were really interested voted either "yes" or "no", we find that a 3/5ths (60 per cent) majority requirement of those voting on the question would have resulted in the passage of 35 of these 42 proposals and the defeat of only 7. In fact so many of the favorable majorities ran from 2/3rds and upwards to over 5/6ths that even with a 2/3rds requirement, 26, or over half of these amendments, would have passed.

the constitution must first be approved by "two-thirds of the members elected to each branch of the legislature."⁵³ This means that 45 out of 67 senators and 88 out of 131 representatives must vote in the affirmative. If this difficulty can be surmounted, the proposal goes to the electors at the next election for members of the legislature, who may vote for or against calling the convention, and only "if a majority of all the electors voting at said election" vote favorably can the next step be taken. In other words it is much harder to get such a proposal through the legislature than it is to get an amendment proposed, and it is equally difficult in the two cases to get the proposal adopted.

On the other hand, once these difficult preliminaries are out of the way, it may be fairly easy to obtain a revision of the constitution. After popular approval has been given, the next legislature is required to provide by law for calling the convention. The constitution provides further only that "The convention shall consist of as many members as the house of representatives, who shall be chosen in the same manner, and shall meet within three months after their election for the purpose aforesaid." Here we see that the framers of the constitution wisely refrained from trying to tie the hands of the convention. It left that body free to revise little, much, or all of the constitution, as it saw fit, and left it free also to determine for itself when and how to submit its proposals to the electors, and what majority to require for adoption.

The whole process here outlined could hardly be completed in less than four years and might require six, but it is the one method by which a complete revision of the constitution can be brought about at one time. For the latter reason it is safe to predict that some day, in the near or far future, another constitutional convention will be held in Minnesota, but before that event it may be necessary to amend the convention section in order to remove some of the constitutional obstacles which now prevent the calling of one.

Of course, on the side of policy, many persons oppose the holding of a constitutional convention for fear of what it may do. It is easy to picture undesirable possibilities, such as the lengthening of the constitution and the writing in of this or that fad, but it is easier to entertain fears of this sort than to prove that these things will happen in fact. During the past few decades a number of leading northern states including Massachusetts, New

⁵³Art. 14, sec. 2.

York, Ohio, and Michigan, have held successful constitutional conventions. In Massachusetts, Ohio, and Michigan the voters gave general approval to the results. In New York, and in Illinois where the convention was unable to harmonize the interests of Chicago with those of other parts of the state, the voters rejected the proposals, although in New York some of them have been subsequently adopted. All things considered the results of these conventions were good, and those states which adopted their convention proposals were distinctly the gainers thereby. Where the legislature is careful to provide a preliminary temporary commission to prepare information for the convention, and where partisanship is subordinated to the public interests in the election of convention delegates, there is little or no reason to fear the results of holding a constitutional convention.